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July 22, 2004  
DECISION AND ORDER  
OFFICE OF HEARINGS AND APPEALS

Hearing Officer Decision

Name of Case: Personnel Security Hearing

Date of Filing: April 13, 2004

Case Number: TSO-0096

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as “the individual”) to hold an access authorization under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, “General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.”<sup>1</sup> A local DOE Security Office suspended the individual’s access authorization pursuant to the provisions of Part 710. In this Decision I will consider whether, on the basis of the testimony and other evidence in the record of this proceeding, the individual’s access authorization should be reinstated. As discussed below, after carefully considering the record before me in light of the relevant regulations, I have determined that the individual’s access authorization should not be reinstated at this time.

## **I. Background**

The individual held a DOE security clearance in the 1990s when he worked for a former employer. In 2002, the individual’s current employer requested that the DOE reinstate his access authorization. A background investigation ensued and some potentially derogatory information surfaced. The DOE attempted to resolve the security concerns associated with the derogatory information by conducting two personnel security interviews with the individual. Unable to resolve its numerous concerns, the DOE referred the individual to a board-certified psychiatrist (DOE consultant-psychiatrist) for a mental evaluation. The DOE consultant-psychiatrist examined the individual in March 2003, and memorialized his findings in a report (Psychiatric Report or Exhibit 2-1). In the Psychiatric Report, the DOE consultant-psychiatrist stated that the individual suffers from a Personality Disorder that “has been expressed in a chronic depression and, has caused significant defects in judgment and reliability in the past – including excessive alcohol use, illegal drug use, bankruptcies, divorces, military nonjudicial punishments and demotions, and firings for sexual harassment.” Ex. 2-1. The DOE consultant-psychiatrist opined that the

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<sup>1</sup> Access authorization is defined as “an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.” 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

individual's personality disorder is an illness or mental condition that causes, or may cause a significant defect in judgment and reliability in the future.

Based on the psychiatric report and other information uncovered during the background investigation, the DOE sent the individual a letter advising him that it possessed reliable information that created a substantial doubt regarding his eligibility to hold a security clearance. The DOE also advised that the derogatory information it possessed fell within the purview of three potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections (h), (k) and (l) (Criteria H, K, and L respectively).<sup>2</sup>

Upon his receipt of the Notification Letter, the individual exercised his rights under the Part 710 regulations and requested an administrative review hearing. On April 15, 2004, the Director of the Office of Hearings and Appeals appointed me the Hearing Officer in this case. I conducted a hearing in this matter within the time prescribed in the regulations. 10 C.F.R. § 710.25(g). At the hearing, the individual represented himself and presented his own testimony and that of eight witnesses. The DOE presented testimony from two witnesses. In addition to the testimonial evidence, the DOE tendered 19 exhibits into the record, and the individual submitted 32 exhibits.

## **II. Regulatory Standard**

### **A. Individual's Burden**

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for granting security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9<sup>th</sup> Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

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<sup>2</sup> Criterion H concerns information that a person has "[a]n illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment and reliability." 10 C.F.R. § 710.8(h). Criterion K relates to information that a person has "[t]rafficked in, sold, possessed, used, or experimented with a drug or other substance listed in the Schedule of Controlled Substances established pursuant to section 202 of the Controlled Substances Act of 1970 (such as marijuana, cocaine, amphetamines, barbiturates, narcotics, etc.) except as prescribed or administered by a physician licensed to dispense drugs in the practice of medicine, or as otherwise authorized by Federal law." 10 C.F.R. § 710.8(k). Criterion L relates, in part, to information that a person has "[e]ngaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security." Such conduct or circumstances include, among other things, criminal behavior. 10 C.F.R. § 710.8 (l).

The individual must come forward at the hearing with evidence to convince the DOE that restoring his access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

## **B. Basis for the Hearing Officer’s Decision**

In personnel security cases arising under Part 710, it is my role as the Hearing Officer to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person’s access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). I am instructed by the regulations to resolve any doubt as to an individual’s access authorization eligibility in favor of the national security. *Id.*

## **III. The Notification Letter and the Security Concerns at Issue**

As previously noted, the DOE cites three potentially disqualifying criteria as bases for suspending the individual’s clearance, *i.e.*, Criteria H, K and L.

With regard to Criterion H, the DOE relies on the opinion of a DOE consultant-psychiatrist that the individual suffers from a personality disorder that causes, or may cause, a significant defect in his judgment or reliability. In the Psychiatric Report, the DOE consultant-psychiatrist explained that the individual has some traits of a Borderline Personality Disorder and some traits of an Antisocial Personality Disorder. These personality disorders, states the DOE consultant-psychiatrist, are included in Cluster B of the grouping of Personality Disorders set forth in the Diagnostic and Statistical Manual of the American Psychiatric Association, 4<sup>th</sup> edition, Text Revision (DSM-IV-TR). The DOE consultant-psychiatrist determined that “the precise formulation of the individual’s diagnosis” for purposes of the DSM-IV-TR is: Personality Disorder, Not Otherwise Specified (Cluster B Personality Disorder with antisocial and borderline traits). According to the DOE consultant-psychiatrist, the individual’s personality disorder has been expressed by his chronic depression. More importantly, the DOE consultant-psychiatrist found that the personality disorder afflicting the individual has caused significant defects in the individual’s judgment and reliability in the past as manifested by the following: the individual’s excessive alcohol use, his illegal drug use, two bankruptcy filings, his marital problems and divorces, his problems in the military, and three job terminations for sexually harassing co-workers.

From a security perspective, emotional, mental and personality disorders can cause a significant defect in an individual’s psychological, social and occupational functioning.

These disorders are security concerns because they may indicate a defect in judgment, reliability, or stability. *See* Appendix B to Subpart A of 10 C.F.R. Part 710.

To justify Criterion K as one of the bases for suspending the individual's security clearance, the DOE relates that the individual's medical records from September 1999 reveal that the individual reported to his medical provider that had borrowed a muscle relaxant from friends as recently as a week before that medical visit. The individual also reported to his medical provider that he took Soma plus Hydrocodone for a "buzz." Hydrocodone is a Drug Enforcement Agency Schedule II Controlled Substance. The security concerns associated with this conduct are as follows. First, improper use of, or illegal involvement with, drugs raises questions regarding a person's willingness or ability to protect classified information. *See* Appendix B to Subpart A of 10 C.F.R. Part 710. Second, the use of drugs in a manner that deviates from approved medical direction may impair social or occupational functioning and increase the risk of an unauthorized disclosure of classified information. *Id.*

To support its Criterion L concerns, the DOE cites inconsistencies between information that the individual told the DOE during a 1996 personnel security interview (PSI) about his past drug use and information gleaned from medical records in 1999 on the same subject. Such inconsistencies raise questions about the individual's honesty, trustworthiness, and reliability and his willingness to comply with rules and regulations and properly safeguard classified information.

#### **IV. Analysis**

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c).<sup>3</sup> After due deliberation, I have determined that the individual's access authorization should not be reinstated at this time. I cannot find that such reinstatement would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

##### **A. Criterion H**

Under the Part 710 regulations, the DOE may rely on the diagnosis of a psychiatrist that a person suffers from a mental condition or illness that causes or may cause a significant defect in judgment and reliability as a reason for concluding that a security concern exists

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<sup>3</sup> Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding his conduct, to include knowledgeable participation, the frequency and recency of his conduct, the age and maturity at the time of the conduct, the voluntariness of his participation, the absence or presence of rehabilitation or reformation and other pertinent behavioral changes, the motivation for his conduct, the potential for pressure, coercion, exploitation, or duress, the likelihood of continuation or recurrence, and other relevant and material factors.

under Criterion H. As noted above, it is the opinion of the DOE consultant-psychiatrist that the individual suffers from a Personality Disorder, Not Otherwise Specified (Cluster B Personality Disorder with antisocial and borderline traits). According to the DOE consultant-psychiatrist, the individual's four nonjudicial punishments in the Navy between 1988 and 1994, his two bankruptcy filings (one in 1995 and the other in 2002), and his improper use of a prescription medication, Hydrocodone, are symptoms of an antisocial personality.<sup>4</sup> With regard to the individual's borderline personality traits, the DOE consultant-psychiatrist noted the following information:<sup>5</sup>

- His three job terminations for sexual harassment (March 2000, January 2001, and October 2001)<sup>6</sup>
- His past history of drug and alcohol abuse
- His history of chronic depression
- His pattern of unstable and intense interpersonal relationships

The DOE consultant-psychiatrist explained that the individual did not fulfill enough criteria for him to render a specific diagnosis under the DSM-IV-TR that the individual suffers from an Antisocial Personality Disorder or a Borderline Personality Disorder. It is the combined symptoms from this two personality disorders, opined the DOE consultant-psychiatrist, that triggered the diagnosis of Personality Disorder Not Otherwise Specified.

At the hearing, the DOE consultant-psychiatrist testified that all the symptoms of the individual's personality disorder are treatable. For example, with regard to the

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<sup>4</sup> According to the DOE consultant-psychiatrist, the individual's four nonjudicial punishments in the Navy meet criterion 1 of the DSM-IV-TR's definition for Anti Social Personality Disorder. Criterion 1 is the "[f]ailure to conform to social norms with respect to lawful behaviors as indicted by repeatedly performing acts that are grounds for arrest. Psychiatric Report at 9-10. In addition, the individual's two bankruptcy filings and his three terminations for sexual harassment meet Criterion 6 of the DSM-IV-TR. *Id.* Criterion 6 is "consistent irresponsibility, as indicated by repeated failure to sustain consistent work behavior or honor financial obligations." *Id.*

<sup>5</sup> The DOE consultant-psychiatrist opined that the individual's past substance abuse and job terminations for sexual harassment meet Criterion 4 of the definition of Borderline Personality Disorder in the DSM-IV-TR. *Id.* at 9. Criterion 4 is "impulsivity in at least two areas that are potentially self-damaging (e.g. spending, sex, substance abuse, reckless driving, binge eating). *Id.* In addition, the individual's two bankruptcy filings meet Criterion 2 of the definition of Borderline Personality Disorders in the manual. Criterion 2 is "a pattern of unstable and intense interpersonal relationships characterized by alternating between extremes of idealization and devaluation." Finally, the individual's chronic depression meets Criterion 7 of the Borderline Personality Disorder definition which states "chronic feelings of emptiness." *Id.*

<sup>6</sup> According to the record, the individual worked for one DOE contractor from December 1998 until March 2000. His employer terminated him after a third violation for creating a hostile work environment for female employees by making abusive and inappropriate comments, gestures and actions. After a four month period of unemployment the individual found another job in July 2000. He worked there for six months before his employer terminated him after one earlier warning for "extremely serious misconduct," including engaging in sexually explicit conversations and revealing his body piercings. He was again unemployed for four months until he obtained a job in May 2001. His employer terminated him five months later for making inappropriate sexual comments and inappropriate touching.

individual's past abuse of drugs, the remedy is to abstain from drugs. Transcript of Hearing (Tr.) at 56. As for the past alcohol abuse, the remedy is sobriety, psychotherapy, counseling and Alcoholics Anonymous (AA). *Id.* With respect to the personality issues, the DOE consultant-psychiatrist recommends weekly psychotherapy for one year. *Id.* at 57, 62. Finally, regarding the individual's depression, the DOE consultant-psychiatrist recommends that the individual have his prescription medication monitored by a psychiatrist. *Id.* at 62. The DOE consultant-psychiatrist concluded if the individual follows his recommendations, the individual should be re-evaluated by a psychiatrist. At that point, the DOE consultant-psychiatrist believes it likely that the individual's personality disorder would no longer pose a threat to his judgment and reliability. *Id.*

## **1. Mitigating Evidence**

### **a. Documentary Evidence**

As an initial matter, the individual challenges the diagnosis at issue. He presented a letter from a licensed social worker who has treated him on an outpatient basis on two occasions. Exhibit E-1. In the letter, the social worker states that she diagnosed the individual as suffering from a low-level, chronic depression (Dysthymic Disorder) for which the individual is being treated with an antidepressant, Serzone. *Id.* The social worker also opined in the letter that the individual is suffering from an Adjustment Disorder with Mixed Anxiety and Depressed Mood because of the stress related to the pending administrative review process. *Id.* Finally, the social worker wrote that she did not see any signs of a personality disorder or major mood, behavior, or addition disorder. *Id.*

The individual also submitted records showing that during the time that he participated in the DOE's Personnel Security Assurance Program (PSAP)<sup>7</sup> in the late 1990s while employed by another DOE contractor, mental health professionals affiliated with the DOE never questioned his mental health. *See* Exhibits E-4 to E- 11.

In addition, the individual provided evidence to show that medical doctors have prescribed Hydrocodone for his use to alleviate knee pain since 1998. Specifically, he submitted a medical chart note from June 1998 showing that a physician prescribed Lortabs, the brand name for Hydrocodone. Exhibit B-2. He also submitted a recent prescription dated May 2004 for the Hydrocodone. Exhibit B-1.

The individual's medical records also show that in September 1999 he entered a six- week intensive outpatient substance abuse program for his alcohol usage and began attending AA. Exhibit 2-2. By June 2000, the individual had completed his

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<sup>7</sup> The DOE's Personnel Security Assurance Program (PSAP) was a special access authorization program, mandated by DOE for positions: (1) that afforded direct access to Category I quantities of special nuclear material or had the direct responsibility for transportation or protection of Category I quantities of special nuclear material (2) that were identified as nuclear material production reactor operators, or (3) that had the potential for causing unacceptable damage to national security. [formerly found in Part B of 10 CFR Part 710]. The PSAP program is now part of the DOE's Human Reliability Program.

psychotherapy, substance abuse counseling, and participation in AA. Exhibit 2-1. Subsequently, he resumed drinking on a reduced basis. The individual continues to drink alcohol occasionally, according to his own testimony. Tr. at 129. Laboratory results from tests ordered by the DOE consultant-psychiatrist in March 2003 revealed that the individual's liver enzymes are within normal limits. Exhibit 2-1.

## **b. Testimonial Evidence**

In his testimony, the individual addressed his drug and alcohol use, his impulse control problems in the workplace and in his personal life and his depression.

With regard to the allegation that he has used illegal drugs, the individual first denied ever using LSD or cocaine in the past. Tr. at 125. It is his position that the notes from a counseling center upon which the DOE relies do not accurately reflect what he told the counselors regarding his past drug use. *Id.* He is certain that he told the counselors about his past usage of marijuana.<sup>8</sup> *Id.* He added, however, that he had hit a low point in his life when he sought counseling and "I just have no idea what I would have said or admitted to." *Id.* In concluding, the individual stated under oath that he never used any illegal drug except for marijuana. *Id.* at 126. As for his use of muscle relaxants, the individual pointed to the documentary evidence showing that he has not only had a prescription for Hydrocodone since 1998 but he used the drug while under the supervision of a medical doctor. *Id.* at 110. He testified that he used Hydrocodone for approximately one year from June 1998 until June 1999. *Id.* at 112. At the request of the DOE, the individual stopped using the medication to maintain his credentials in the PSAP program. *Id.* He denies telling the counseling center that he borrowed muscle relaxants from friends on or around September 1999. Tr. at 113.

With regard to his problems with impulse control, the individual testified that he is currently in a stable relationship with his girlfriend of two years. *Id.* at 127. As for the three terminations for sexually harassing co-workers, the individual testified that these incidents occurred soon after he was discharged from the Navy where he had served for 20 years. *Id.* at 108. He explained that he "didn't know how to react in the real world" after spending 270 days a year for 20 years living in a submarine with 120 men. *Id.* He further explained that he had never regularly worked around women in the Navy. *Id.* at 118. He also explained that at the time these three terminations occurred, his second marriage had just ended, another relationship had terminated, and he began taking medication for depression. *Id.* at 116. He testified that he has learned from his mistakes and that in the two and one-half years that he has been with his new employer, he has not caused any similar problems in the workplace. *Id.* at 117.

To corroborate his explanation about his difficulty transitioning from military to civilian life, the individual presented the testimony of a co-worker who had spent 22 years in the U.S. Navy. The co-worker testified that he, too, had problems assimilating into civilian

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<sup>8</sup> The individual's past marijuana use is not in dispute. The individual told the DOE about his past usage of marijuana during a 1996 PSI, and he subsequently signed a Drug Certification to mitigate the security concerns associated with that illegal drug use. Tr. at 17, 23.

life from the military and had to learn that “cursing like a sailor” is not acceptable in the corporate world. *Id.* at 92. One of the individual’s co-workers who currently shares an office with him testified that she has never felt that the individual has acted or said anything sexually harassing. *Id.* at 85. One of the individual’s managers testified that the individual has a quick wit. *Id.* at 98. Even though no one has ever complained to the manager about the individual’s comments, the manager has on occasion asked the individual to “hold his tongue a bit.” *Id.* Another witness who is a project leader at the individual’s place of employment testified that the individual is outspoken but that no one has ever complained about his comments. *Id.* at 74.

The individual addressed the four nonjudicial punishments that he received in the military by describing in detail that he received two of the four punishments for the improper actions of subordinates. *Id.* at 134. One of the individual’s co-workers who also spent more than two decades in the U.S. Navy testified that “it’s common in the military for a supervisor to be punished if one of his workers makes a mistake.” *Id.* at 92. The individual also submitted 15 awards and letters of commendation that he received while in the military. Exhibits C-1 to C-15. He asks that the four isolated incidents at issue be judged against the numerous positive things that he accomplished in his Navy career. Tr. at 136.

Finally, with regard to his depression the individual testified that he plans to continue seeing the social worker and had no objection to consulting a psychiatrist to oversee his medication management. *Id.* at 122.

## **2. Evaluation of Evidence**

In evaluating the evidence, I gave considerable deference to the opinion of the DOE consultant-psychiatrist who provided additional insight into the individual’s rehabilitative efforts after listening to all the testimonial evidence at the hearing. The DOE consultant-psychiatrist thought that the individual had made a number of improvements since he had evaluated him more than a year before the hearing. *Id.* at 140. According to the DOE consultant-psychiatrist, drugs are no longer an issue for the individual. Regarding the individual’s depression and mood problems, the DOE consultant-psychiatrist believes that the antidepressants are handling them. As for the individual’s job terminations stemming from sexual harassment, the DOE consultant-psychiatrist learned for the first time at the hearing that the individual had been living in an all male environment in a submarine for a good portion of the 20 years that preceded these incidents. It is significant, according to the DOE consultant-psychiatrist that the individual has not engaged in similar conduct in the past two to three years. With regard to the individual’s interpersonal relationships problems, the DOE consultant-psychiatrist opined that the individual has improved in this area. However, the DOE consultant-psychiatrist still has mild concerns about the individual’s occasional drinking because he believes that alcohol should not be consumed with antidepressants. In the end, the DOE consultant-psychiatrist concluded that while all the individual’s problems are not gone, the individual “is on the right track to addressing all his issues.” *Id.*



I also considered the documentary evidence from the social worker that the individual submitted. There are two reasons why this evidence is insufficient to overcome the diagnosis here. First, the individual did not tender any evidence of the social worker's educational or occupational qualifications. I inferred from the initials that follow the social worker's name on the letter that she is a licensed social worker. Even assuming that the social worker possessed the requisite credentials to opine about the individual's mental health, I find that the opinion of a extensively trained psychiatrist such as the DOE consultant-psychiatrist is entitled to more weight. Second, the social worker did not appear as a witness and, as a consequence, could not be questioned about such matters as the basis or bases for her diagnoses, the kind of counseling that she is providing to the individual, the individual's treatment plan and duration, and her prognosis for the individual's rehabilitation efforts.

Based on a careful examination of the testimonial and documentary evidence, I find that the individual has not mitigated the Criterion H concerns in this case. A key component of the individual's rehabilitation from his mental condition, *i.e.*, psychotherapy and counseling one time per week for one year, is lacking at this point. The evidence in the record indicates that the individual began counseling for his problems in May 2004. Exhibit E-1. Considering the DOE consultant-psychiatrist's recommendation that the individual receive one year of counseling, the earliest that the individual could possibly achieve rehabilitation would be May 2005. Until then, the risk that the individual's personality disorder might adversely affect his judgment and reliability is palpable. Accordingly, I must find that the DOE's Criterion H concerns remain unresolved.

## **B. Criterion K**

The documentary evidence shows that the individual had a prescription for Hydrocodone in 1998 and 2004. The individual testified that he had the prescription continuously for six years from 1998 through 2004, although there is no documentary evidence in the record to support this contention. According to the individual, he stopped getting his prescription for Hydrocodone refilled sometime in June 1999 in order to maintain his credentials with the DOE's PSAP Program.

Counseling records from September 1999 record that the individual borrowed muscle relaxants from friends. Exhibit 2-2. At the hearing the DOE Counsel inquired about this statement. The following exchange occurred:

DOE Counsel: Ms. XXXX has noted that, "He borrowed muscle relaxants from friends, and last did this a week ago." This was September 22 of '99.

Individual: That one, sir, I have no recollection of saying that. I don't borrow muscle relaxants or medications from friends. Some of these—I can only conjecture that some of these people may have put it in, on maybe taken what I said wrong, or put it in there just so I'd be a

better candidate for treatment or for insurance purposes. I can't speak for them, I can only speak for myself.

DOE Counsel: Then also, Dr. XXXX's evaluation dictated October 7, 1999, she noted, "However, a few months ago, he, "meaning you," was taking a muscle relaxant, hydrocodone, for the accompanied buzz." Did you tell her that?

Individual: No, sir, I don't recall saying that.

DOE Counsel: Do you know where she got that from?

Individual: I don't know. Once again, I will say this, that maybe in jest or something, that I should pick a better forum for saying things.

Tr. at 111-112.

After observing the individual's demeanor at the hearing and carefully considering his testimony, I am not convinced that the individual did not borrow Hydrocodone in September 1999 or use that controlled substance for an improper purpose. I find it difficult to believe that two different professionals would have mischaracterized information tendered by the individual on two separate occasions. Moreover, these medical records provide contemporaneous evidence on the drug use at hand. Finally, even if the individual had a prescription for the Hydrocodone in September 1999, I note that he had agreed on or around June 1999 to refrain from taking that narcotic in order to maintain his PSAP credentials. In the end, the burden is on the individual to mitigate the DOE's concerns associated with the information at issue in this case. I find that he has not met his burden with regard to the Criterion K concerns.

### **C. Criterion L**

The DOE's Criterion L concerns arise from the individual's inconsistent statements concerning his past use of illegal drugs. According to the Psychiatric Report, the individual told the DOE consultant-psychiatrist in 2003 that while he was in high school he not only used marijuana but also tried LSD twice. Exhibit 2-1 at 2. According to counseling records dated September 1999, the individual reported to a social worker that he had used LSD in high school, cocaine in 1985, and speed. Exhibit 2-2. In addition, counseling records from October 1999 reveal that the individual told a psychologist that he had used LSD and speed in high school as well as smoked "my weight in marijuana." *Id.* In contrast to the information cited above, the individual specifically denied using cocaine, speed, LSD and other drugs during a PSI in 1996. Exhibit 4-3 at 18. During the 1996 PSI, the individual admitted using marijuana "one time" in high school. *Id.* at 17.<sup>9</sup>

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<sup>9</sup> I note that in 1996 the DOE mitigated the individual's drug use during his high school years, relying on the individual's representation that he had only experimented with marijuana one time in 1978. Exhibit 1-8. It was on the strength of this representation that the individual was provided a Drug Certification to sign in 1996. *Id.*

At the hearing the individual testified that he does not recollect telling the social worker or the psychologist at the Counseling Center that he had used cocaine. Tr. at 125. He added that it was a low point in his life and “I just have no idea what I would have said or admitted to.” *Id.* It is the individual’s position that the Counseling Center either misquoted him in their records or erroneously put information into his records. *Id.* He then reaffirmed in his testimony that he never used LSD.

The individual did not convince me that his only use of illegal drugs was marijuana in high school. It strains credulity that both a social worker and a psychologist would have erroneously reported in medical records written in two different months in 1999 that the individual had experimented with LSD and speed in one instance and cocaine in another instance. Moreover, the individual does not even address his statement in 2003 to the DOE consultant-psychiatrist that he tried LSD in high school.

In considering the individual’s explanations for his seeming lack of candor with regard to his past drug usage, I gave weight to the testimony of the DOE consultant-psychiatrist who testified a second time at the end of the hearing after having heard the testimony of all the witnesses. The DOE consultant-psychiatrist opined that the individual did not convince him that he did not remember relaying information to the counseling center in 1999. The DOE consultant-psychiatrist pointed out that the individual’s own medical records show that he has a very high IQ, a fact that led the DOE consultant-psychiatrist to disbelieve that the individual did not recall specific information that he had provided in 1999.

After careful consideration of all the evidence, I find that the individual has not provided credible explanations for the differing accounts that he provided regarding his past illegal drug use. Moreover, as I noted in Section IV.B. above, it is possible that the individual may have used Hydrocodone in September 1999 after assuring the DOE that he would discontinue use of that narcotic so as to maintain his PSAP credentials. All these factors cause me to have lingering doubts about the individual’s reliability, trustworthiness, and honesty. For this reason, I cannot find that the individual has mitigated the Criterion L concern at issue.

## **V. Conclusion**

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Criteria H, K, and L as to whether the individual’s access authorization should be reinstated. After considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, I have found that the individual has not brought forth sufficient evidence to mitigate all of the security concerns advanced by the DOE. I therefore cannot find that reinstating the individual’s access authorization would not endanger the common defense

and would be clearly consistent with the national interest. Accordingly, I have determined that the individual's access authorization should not be reinstated.

Ann S. Augustyn  
Hearing Officer  
Office of Hearings and Appeals

Date: July 22, 2004